

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.446/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकरअपील सं./ ITA No.447/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

&

आयकरअपील सं./ ITA No.448/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2011-12)

Income Tax Officer (E) Ward-3, Chennai – 34.	बनाम/ Vs.	M/s. Chennai Auto Ancillary Industrial Infrastructure Upgradation Company SIDCO Administrative Office, 2 nd Main Road, Ambattur Ind. Estate, Chennai – 600 058
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. AACCC-7059-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No. 79/CHNY/2018
(Arising out of ITA No.446/Chny/2018)
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

Cross Objection No. 80/CHNY/2018
(Arising out of ITA No.447/Chny/2018)
(निर्धारण वर्ष / Assessment Year: 2010-11)

&

Cross Objection No. 81/CHNY/2018
(Arising out of ITA No.448/Chny/2018)
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Chennai Auto Ancillary Industrial Infrastructure Upgradation Company SIDCO Administrative Office, 2 nd Main Road, Ambattur Ind. Estate, Chennai – 600 058	बनाम/ Vs.	Income Tax Officer (E) Ward-3, Chennai – 34.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. AACCC-7059-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by	:	Shri Amol Kirtane - CIT-DR
निर्धारित की ओर से/Assessee by	:	Shri N.V. Balaji – Advocate

सुनवाई की तारीख/ Date of Hearing	:	11/10/2021
घोषणा की तारीख / Date of Pronouncement	:	11/10/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by the Revenue for Assessment Years [AY] 2009-10, 2010-11 & 2011-12 arises out of the common order of learned Commissioner of Income Tax (Appeals)-17, Chennai [CIT(A)] dated 05/12/2017. The assessee has filed cross objections against the same to assail additions made by Ld. AO. The appeals for AYs 2009-10 & 2010-11 are in second round since the matter was restored back by Tribunal (ITA Nos.2072-73/Chny/2013; dated 07/04/2015) to the file of Ld. CIT(A) for fresh adjudication. The Ld. CIT(A) has passed common order for AYs 2009-10 to 2011-12.

2. The registry has noted a delay of one day in the revenue's appeals. Similarly, delay of 20 days has been noted in assessee's cross-objections. The condonation of the same has been sought by both the sides on the strength of affidavits as placed on record. Keeping in view the period of delay, we condone the delay in the appeals as well as in cross-objections and proceed with the adjudication of the same.

3. The revenue's grounds in AY 2009-10 reads as under:-

1. The order of the learned CIT(A) is contrary to the law and facts of the case.
2. The Id CIT(A) erred in holding that the assessee company is eligible for exemption u/s.11 of the Act and it is not hit by the amended provisions of Sec.2(15)

of the Act under the object of "General Public Utility".

3. The Id CIT(A) failed to appreciate that income derived from collection of maintenance fee, user charges, advertising charges, appropriate charges for use of cable/power network, sewage lines etc., exceeds the threshold limit of Rs.10 lakhs as prescribed under 1st and 2nd proviso to Sec 2(15) of the Act.

4. The Id CIT(A) ought to have appreciated the fact that the Finance Act 2008 w.e.f. 01.04.2009 has made a very fundamental and drastic change by excluding a group of Trusts from engaging into trade and business related activities. Therefore these trusts which are pursuing the residuary category objects under 'charitable purpose' are debarred from having any trade or business related activity.

5. The Id CIT(A) ought to have followed the decision of Hon'ble ITAT, Panaji Bench in the case of Entertainment Society of Goa V. CIT(2013) 34 Taxmann.com 210.

6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

After considering rival submissions, our adjudication would be as given in succeeding paragraphs.

4.1 The material facts are that the assessee is a registered entity u/s 25 of The Companies Act, 1956. It holds valid registration u/s 12AA since the year 2005 and hitherto allowed exemption u/s 11 / 12 as applicable to a charitable trust. However, Ld. AO denied the same in this year by holding that the assessee collected maintenance charges, track rent and earned income from other sources which would be in the nature of commercial receipts and therefore, the activities were hit by proviso to Sec. 2(15). Accordingly, the income was computed under normal provisions after denying the exemption u/s 11/ 12.

4.2 On the basis of above opinion, a proposal was sent to appropriate authority to cancel the registration of the assessee. However, per query from bench, it was submitted that no action of cancellation was taken against the assessee.

5.1 During appellate proceedings in second round, it was appreciated by Ld. CIT(A) that the assessee was formed as a special purpose vehicle to upgrade infrastructure at three industrial units through the

cluster development programme initiated by the Government of India under the Industrial Infrastructure Upgradation Scheme, 2003. Accordingly, the assessee received grant from central as well as state government in addition to contribution from industrial units located within three industrial estates. The assessee entered into a MoU with TANSIDCO to carry out various activities as per the agreement which would include improvement of infrastructural facilities at these three industrial estates. To meet the running cost, the assessee was allowed to collect maintenance / other charges from beneficiary units. The Ld. AO treated these charges as commercial receipts and denied the exemption by relying upon various decisions which differ on facts.

5.2 The Ld. CIT(A), taking note of amended provisions of Sec.2(15) read with CBDT Circular No.11/2008 dated 19/12/2008, proceeded to examine the assessee's activities to ascertain whether they would be hit by proviso to Sec.2(15) particularly when no alteration could be made to assessee's Memorandum and Articles of Association and no amendment could be made to the basic character of the assessee that would be contrary to the provisions of Sec.2(15), 11, 12, 13 and 80G of the Act. Any surplus on winding up was to be transferred to other entities having similar objects and could not be distributed to the members of the assessee. There was no object of profit motive and the ultimate control of the assessee vested with Government though Board of Directors administering the affairs of the assessee on day to day basis. Therefore applying the ratio of decisions of Hon'ble Supreme Court in **CIT V/s Andhra Pradesh State Road Transport Corporation (159 ITR 1)** and in **CIT V/s Gujarat Maritime Board (295 ITR 561)**, it was the predominant objective which was required to be considered while

examining the true nature of assessee's activities. Finally, the assessee was held to be entitled for deduction u/s 11 / 12 with the observations that fees collected by the assessee from member-units was to meet the expenditure while providing general utility service to the units of the industrial estates towards electricity, road, drainage, water etc. Further, the ultimate control of the assessee was with the Government and accounts were subjected to audit as per Government procedures and there was no element of profit motive at all. The relevant findings were as under: -

4.6. As far as the collection of fees from the member-units is concerned, is relevant to refer to the observations made by the Hon'ble High Court of Gujarat in the case of Ahmedabad Urban Development Authority vs ACIT(Exemptions) [(393 ITR 323) (Guj)] which are as follows:

Considering the aforesaid facts and circumstances and more particularly, considering the fact that the assessee is a statutory body - Urban Development Authority constituted under the provisions of the Act, constituted to carry on the object and purpose of Town Planning Act and collects regulatory fees for the object of the Acts: no services are rendered to any particular trade, commerce or business: whatever the income is earned/received by the assessee - even while selling the plots (to the extent of 15 per cent of the total area covered under the Town Planning Scheme) is required to be used only for the purpose to carry out the object and purpose of Town Planning Act and to meet with expenditure while providing general utility service to the public such as electricity, road, drainage, water etc. and even the entire control is with State Government and even accounts are also subjected to audit and there is no element of profiteering at all, the activities of the assessee cannot be said to be in the nature of trade, commerce and business and, therefore, proviso to section 2(15) of the Act shall not be applicable so far as assessee is concerned and, therefore, the assessee is entitled to exemption under section 11 of the Act. Aim', so far as another question which is posed for the consideration of this Court i.e whether while collecting the cess or fees, activities of the assessee can be said to be rendering any services in relation to any trade, commerce or business is concerned, for (he reasons stated above, merely because the assessee is collecting cess or fees which is regulatory in nature, the proviso to section 2(15) of the Act shall not be applicable. As observed hereinabove neither there is element of profiteering nor the same can be said to be in the nature of trade, commerce or business.

Likewise, in the case of the appellant, I find that fees has been collected to meet the expenditure while providing general utility service to the units of the industrial estates towards electricity, road, drainage, water etc. Secondly, the ultimate control is with the Government and even accounts are also subject to audit as per

Government procedures and there is no element of profit motive at all. Therefore, the activities of the appellant cannot be said to be in the nature of trade, commerce and business conducted with a profit motive. As observed by the Hon'ble High Court of Allahabad in the case of CIT (Exemptions) vs Yamuna Expressway Industrial Development Authority (395 ITR 18) (All) charitable purpose primarily envisages that pre-dominant object must be to promote welfare of general public. Ancillary activity, if any, other than that of the general one performed by the said institution would not render such institution 'non-charitable'.

An organization or institution which is functioning for development and maintenance of industrial infrastructure cannot be considered to be involved in activities in the nature of trade, business, or commerce. More so, when the major portion of the funds are provided by the Government and the day to day expenditure is met from the fees collected from the industrial units located in the industrial estate - the prime beneficiaries. Whether an object is of general public utility has to be determined having regard to the particular circumstances under which an institution exists and operates. An object would be of general public utility if it defines a section of public or the residents of a particular locality, provided the class of beneficiaries is well defined as in the case of the appellant. It is an undisputed fact that the appellant was involved in infrastructure project that included provision of water supply, roads, sewerage, street lights etc., and the activity of development and maintenance of such infrastructural projects has to be considered to be an activity aimed at achieving the object of general public utility and nothing less.

The foregoing discussion leads to the inescapable conclusion that the appellant-company came into being as a Special Purpose Vehicle for the development and maintenance of a public utility rather than with any profit motive, and therefore cannot be equated to a business undertaking. The Assessing Officer was, therefore, not justified and correct in coming to the conclusion that the appellant existed for making a profit. The Assessing Officer seems to have lost objectivity in looking into the thrust, ambit and spirit of the meaning of advancement of any other object of 'general public utility'. The predominant object of the appellant being the integrated development of the infrastructural facilities in the industrial estates of Ambattur, Thirumazhisai and Thirumudivakkam undoubtedly fell within the expression 'advancement of any other objects of general public utility' i.e., within definition of section 2(15). Just because the appellant-company had undertaken some activities for earning income for its sustenance, and which were ancillary or incidental to the main object of general public utility, the appellant did not cease to be charitable in character so as to render it ineligible to claim of benefits u/s 11 and 12.

In view of the above, I hold that the Assessing Officer erred in denying the benefits of section 11 and 12 and arriving at the conclusion that the appellant's case falls under the proviso to section 2(15). The Assessing Officer is directed to extend all the benefits of section 11 and 12 to the appellant. The appellant succeeds on this ground. Since Ground No.1 is decided in favour of the appellant, the alternate Ground Nos. 2 to 5 are dismissed as infructuous.

Aggrieved, the revenue is in further appeal before us whereas the assessee, in the cross-objections, has assailed various computations made by Ld. AO.

6. We find that Hon'ble Delhi High Court in the case of **India Trade Promotion Organization vs. DGIT (Exemption) & Ors. (371 ITR 333)**, (WP No. 1872 of 2013 dated 22/01/2015) has held that in both the activities i.e. (i) activity in the nature of trade, commerce or business or (ii) any activity of rendering any service in relation to any trade, commerce or business, dominant and prime objective is to be seen. If the dominant objective was 'profit motive', the trust would not be entitled to claim its objective to be charitable in nature. On the other hand, if the institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it would be an institution established for charitable purposes. It was also observed that merely because a fee or some other consideration is collected or received by the assessee, it would not lose its character of having been established for a charitable purpose. The dominant activity of the assessee was to be examined. If it was not business, trade or commerce then any such incidental or ancillary activity would also not fall within the categories of business, trade or commerce. Although the revenue's Special Leave Petition [SLP] against the same has been admitted by Hon'ble Supreme Court (**84 Taxmann.com 283**), however, there is no stay on the operation of this judgment and the same is very well applicable to the facts of present case.

The Hon'ble Court, in the course of stated judgment, has elaborately considered its own decisions rendered in: -

- (i) Institute of Chartered Accountants of India V/s DGIT (347 ITR 99; 19/09/2011)
- (ii) Bureau of Indian Standards V/s DGIT (2013 212 Taxman 210)
- (iii) Institute of Chartered Accountants of India V/s DGIT [358 ITR 91 04/07/2013]
- (iv) M/s GSI India V/s DGIT (2013 219 Taxman 205 26/09/2013)

In another case of **Institute of Chartered Accountants of India V/s DGIT [358 ITR 91 04/07/2013]**, it was similarly observed by Hon'ble Court that the purpose and dominant object for which an institution carried on its activities is material to determine whether the same is business or not. The purport of the first proviso to Section 2(15) was not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The objective to introduce the proviso was to exclude organizations which were carrying on regular business from the scope of charitable purpose. The expression business, trade or commerce was to be interpreted restrictively and where the dominant objective was charitable any incidental activity for the furtherance of the said objective would not fall within the expression trade, business or commerce.

The Hon'ble Gujarat High Court in the case of **Ahmedabad Urban Development Authority V/s ACIT [396 ITR 323 02/05/2017]** has observed that the expression trade, commerce and business must be read in the context of the intent and purpose of Section 2(15) of the act and the same was not meant to exclude entities which are essentially for charitable purposes but conducting some activities for a consideration or a fees. The test which has to be applied is whether the predominant objective of the activity involved in carrying out the object of general public utility was to sub-serve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity was to carry out the charitable purpose and not to earn profit, it would not

lose its character of a charitable purpose merely because some profit arises from the activity.

Similarly, Hon'ble Allahabad High Court in **CIT V/s Lucknow Development Authority 265 CTR 433 16/09/2013** has held that where a trust is carrying on its activities for the fulfillment of its aims and objectives which are of charitable in nature with no motive to earn profit and in the process, earns some profit, the same would not be hit by proviso to Section 2(15).

7. Thus, it is fairly settled legal position that it is the pre-dominant objective which would be relevant to examine the applicability of proviso to Sec.2(15). The Ld. CIT(A) after examining the primary objects of the assessee as well as the purpose for which it was established, came to a conclusion that the primary objective was charitable in nature and collection of fees was not to earn profit. Therefore, the assessee did not cease to be charitable in character so as to render it ineligible to claim benefits u/s 11 and 12. We concur with these findings of Ld. CIT(A) and consequently, dismiss the revenue's appeals for all the years. Resultantly, delving into assessee's cross-objections has been rendered merely academic in nature and we find no reason to deal the same.

8. All the three appeals as well as cross-objections stand dismissed.

Order pronounced on 11th October, 2021.

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

चेन्नई Chennai; दिनांक Dated : 11/10/2021
RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, चेन्नई / ITAT, Chennai